

Howard County, Maryland
Howard County Ethics Commission

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February 26, 2021

Advisory Opinion 2021-01

An employee (the “Employee” or the “Requestor”) of the Howard County Office of Transportation (the “Office”),¹ requested advice from the Howard County Ethics Commission (the “Commission”) regarding whether accepting a position outside of the County with a company that currently does business with the County is prohibited pursuant to the County’s post-employment prohibitions. For the reasons stated herein, the Commission has determined that the post-employment prohibitions outlined in the Howard County Code (the “Code”), applied to the facts particular to this matter, do not preclude the Requestor from taking the position.

I. BACKGROUND

This request is presented by an individual who is employed as a full-time benefited employee by the Howard County Office of Transportation. The Requestor serves as the Transit Planning Manager for the Office and has held such position for approximately two and a half (2 ½) years. As Transit Planning Manager, the Requestor is responsible for, among other things, ensuring compliance with requirements set by the Federal Transit Administration and the Maryland Transit Administration, proper technical reporting, evaluation of quality of service, and implementation of technology for customers to track bus schedules. As Transit Planning Manager for the Office, the Requestor does not have any supervisory responsibilities and does not make any final transportation decisions, all of which run through the Administrator of the Office.

Requestor applied for the position of General Manager with the Regional Transportation Agency of Central Maryland (“RTA”). The RTA is a public transportation service providing fixed route and paratransit services to Central Maryland, including Howard County, Anne Arundel County, Northern Prince George’s County and the City of Laurel. The Central Maryland Transportation and Mobility Commission provides oversight to the RTA and is comprised of two (2) members from each jurisdiction. First Transit is the company which provides management and operating services for the RTA.

¹ At the time of the request, and hearing on same, the Requestor was a full-time employee of the County. By the time this Advisory Opinion was issued, the Requestor had left for employment with the RTA consistent with this Advisory Opinion.

The Office oversees the contract with RTA/First Transit to provide the County's public transportation. The procurement of such contract was entered into before the Requestor was employed with the County and a new solicitation for such transportation services will not move forward until 2023.

At the hearing before the Commission, the Employee testified regarding his current duties required by his County position. Further, the Administrator of the Office was present to answer questions posed by the Commission and he stated that he did not see any issue with the Requestor taking the position with RTA. He reiterated that the Requestor does not have decision making responsibility and has not been involved in any procurement decisions for the Office. Further, the current General Manager of RTA, the position for which the Requestor intends on taking, appeared and gave a brief overview of her duties and her interaction with the County. She stated that her position did not include any business development role and that she did not solicit business from the County.

II. THE LAW

Post-Employment Provision

Section 22.204(c)² of the Public Ethics Law provides in pertinent part:

- (1) A former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which the former official or employee significantly participated as an official or employee.

The purposes of the post-employment limitation and restrictions are: 1) to avoid the appearance of "switching sides" and thereby providing another party the special knowledge acquired in the context of one's County employment; and 2) preventing the use of prior involvement to benefit the official, employee or another.

It is important to note that there is no time limitation on this bar as to non-elected officials and employees.

² To date, the Ethics Commission has not had an opportunity to issue any advisory opinions regarding the nature of the constraints established by these sections. However, the Ethics Commission did approve its Special Information Memorandum #4 – Post Employment Guidelines, as revised on November 16, 2018.

III. ISSUE

Whether the Requestor taking a position with the RTA would violate any post-employment limitations under the Code?

IV. DISCUSSION

On November 16, 2018, the Commission approved its Special Information Memorandum#4 – Post Employment Guidelines. The key to applying the post-employment provision is in the definition of “specific matter,” “significantly participated,” and “matter that is the subject of legislative action.” The Commission has, historically, looked to the State Ethics Commission for guidance. The State has an identical post-employment limitation and restriction set forth in Md. Code Ann. State Gov’t §15-504(d). The State Ethics Commission issued a Special Information Memo on May 3, 2012, pertaining to post-employment limitations. The State’s interpretation of §15-504(d) does not bar employment with an entity involved in matters relating to a former agency or an individual’s appearance before the agency, rather it looks to identification of *particular* matters in which the individual had *significant* involvement in the context of his or her State employment.

The Commission generally agrees with the State’s interpretation and has adopted criteria for determining whether an individual’s participation in a specific matter³ while employed by the County is significant enough to create a conflict. The application of the post-employment limitations is fact specific and the Commission has adopted the following factors to consider:

1. Did the official have final authority or responsibility for a matter?
2. Was the official authorized to draft specifications for, negotiate or execute the contracts relating to the matter?
3. Did the official have a managerial or policy-making position in matters specifically related to the matter in the areas of contracting, procurement, administration and/or monitoring of grants and subsidies, planning and zoning, inspecting, licensing, regulating, auditing, and budgeting?
4. How much time has elapsed since the work was performed as a County official and since the termination of County employment?
5. Did the new employment flow from or is it otherwise related to a matter on which the individual worked while a County official?
6. Is there an appearance of “switching sides” or providing another party with special knowledge acquired in the context of one’s County employment?

³ The Commission considered a “matter” to include any decision, proceeding, application, submission, request for ruling or other determination, contract, claim, case or such particular matter that would involve some discrete and particularized impact on the official or employee, or which involves as a party an entity with which the official or official or certain relatives are affiliated (See Opinions Nos. 06-01, 01-00, 96-03, 97-03 and 97-04).

7. Is there an appearance of prior County involvement benefiting the official, employee or another?

The Commission recognizes that advice regarding post-employment issues will depend on the specific facts of the situation. In this situation, the Requestor does not have final authority for any matters within the Office. He did not have any managerial or policy-making responsibilities, including any related to the RTA/First Transit. Only the Administrator makes final decisions for anything related to the County's transportation services, including service through the RTA. The Requestor took no part in drafting, negotiating or executing specifications for the County's current contract with the RTA. Nor has he participated in drafting any specifications for any future requests for proposals.

The Requestor testified that he did not solicit an offer for employment with RTA; nor did RTA recruit the Requestor to fill the position. Requestor saw the job listing online and applied. The job opening did not flow from the Requestor's position with the County.

While the Requestor will be taking a position with RTA, an entity which he did have contact with through his County employment, the Commission did not think there was an appearance of "switching sides" or providing the RTA with any special knowledge Requestor acquired from his County employment. The focus of Requestor's position was ensuring compliance with federal and state requirements. This type of work does not lead to giving specialized information to the RTA. There is no appearance of the Requestor's County involvement benefiting the Employee or another in his new position.

The post-employment limitations are not intended to prohibit an official or employee from obtaining employment in the field in which he/she is qualified.

V. CONCLUSION

Based on the specific facts outlined herein, the Commission finds that the Requestor's future employment with the RTA does not violate the Code's post-employment prohibitions. However, if after Requestor has taken the position with RTA, he realizes that there is a *particular* matter in which he had *significant* involvement with the County, he should have someone else at RTA cover that particular matter.

HOWARD COUNTY ETHICS COMMISSION

/s/ Chuck Fuller

Charles Fuller, Chairperson
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